IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL (W) NO.13/2006

Shri Hemant Shesh & Ors.
Vs.
The State of Rajasthan & Ors.

Date of Order :: 3rd July, 2006

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE J.R. GOYAL
::

Shri Virendra Lodha, for the appellants.
Shri S.R. Bajwa Sr.Advocate with
Shri Rajendra Prasad, for respondent No.2.
Shri Harshvardhan Nandwana Dy.G.A, for State.

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REPORTABLE

BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)

This special appeal is directed against the judgment and order of the learned Single Judge dated 1.12.2005 allowing the writ petition of respondent No.2, Hanuwant Singh Bhati, (hereinafter referred to

as ‘the respondent’) in the following terms :

> “. . . . . The respondents are directed to consider the case of the petitioner also for out of turn promotion to Super-time Scale of RAS from the year 1995 after granting necessary relaxation as provided under rule 41 of the Rules of 1954. Necessary consideration be made and decision be taken within thirty days from the date of receipt of certified copy of this order and consequential orders, if required, be passed within 30 days thereafter giving all financial benefits as well to the petitioner including arrears.”

It may be mentioned here that the appellants were not party to the writ petition. They filed this appeal alongwith application seeking leave to appeal contending that out of turn promotion to Super Time Scale to the respondent from the year 1995 will affect their rights and prospects but the directions had been issued behind their back without giving them opportunity of hearing. By order dated 4.1.2006 leave was granted and the appeal was admitted to hearing on 5.1.2006. In the facts and circumstances, till further orders and subject to objections by the respondent, operation of the order of the learned Single Judge was stayed. The stay however was vacated later by another Bench on 27.3.2006 in the following terms :

> “Considering these facts, in our view, it is a fit case for vacation of stay order. Let the Government consider the case of the petitioner on merit either by invoking the provisions of Rule 41 of Rajasthan Administrative Service, 1954 or by making suitable amendment in the relevant rules, as has been done in the case of police officials who have taken part in the concerned encounter.“

The appellants filed application for review of the above order. On 11.5.2006 when the application came up for consideration, the Court observed that as the order (dated 27.3.2006) had been passed by a co-ordinate Bench, it is not possible to make any modification, the proper course in the circumstances would be to finally hear the appeal itself. With the consent of counsel for the parties the appeal was fixed for hearing as first item on 15.5.2006. When the appeal was taken up on 17.5.2006, the Court was informed that in compliance of the order dated 27.3.2006, the State Government had issued an order promoting the respondent to Super Time Scale from the year 1995 under rule 31 of the Rajasthan Administrative Service Rules, 1954 (in short ‘the RAS Rules’) by relaxing rule 41 of the RAS Rules on ad hoc basis subject to decision in the instant appeal.

Expressing anguish over the manner in which the order had been issued by the Government even though the appeal was fixed for final hearing on 15.5.2006, and running on the board, the Court observed that it would be appropriate that the order is not given effect to and kept in abeyance by the Government. An order to that effect was passed keeping the order dated 16.5.2006 in abeyance till further orders.

The case of the appellants is that they respectively belong to 1977, 1975, 1979 and 1978 batches of the RAS as against the respondent who belongs to 1980 batch, and they were granted Super Time Scale in the years 1998-99, 1996-97, 2000-2001 and 1999-2000 respectively as against the respondent who was granted Super Time Scale in the year 2001-2002. The direction of the learned Single Judge to grant such promotion from the year 1995 would affect the rights and prospects for promotion of not only the appellants but many others who would stand superseded in case the direction is implemented and the respondent is granted promotion to Super Time Scale from 1995. Thus without impleading them and giving

them opportunity of hearing, the direction could not have been issued. Further case of the appellants is that rule 32(3) of the RAS Rules prescribes the period of eligibility for promotion to Super Time Scale. The respondent does not possess the eligibility and therefore he could not be granted promotion. The power of relaxation under rule 41 of the RAS Rules can be exercised in the matter of relaxation of only age bar or experience at the time of initial recruitment to the service, and the direction of the learned Single Judge to consider the respondent for promotion from the year 1995 relaxing rule 41 was illegal. Thus neither the rule as to the eligibility for promotion to the Super Time Scale could be relaxed nor the respondent could be given retrospective promotion out of turn.

The respondent does not deny that he belongs to 1980 batch of RAS and he was promoted to the Super Time Scale later than the appellants in 2001-2002. He, however, contends that he was promoted to the Selection Grade earlier than the appellants, except appellant no.2 N.K. Jain, in 1991-92. As regards

appellant no.2, it is said that though he was granted promotion to Selection Grade earlier, he has since been absorbed in the Board of Revenue and ceased to be a member of the RAS. The respondent thus has not only claimed seniority over the appellants (except appellant no.2), he has also questioned their locus standi to challenge the order of the learned Single Judge or the consequential order of out of turn promotion to him. We shall deal with the question of locus standi later at the appropriate place in this judgment.

The area of dispute having been broadly indicated, we may now state the case of the respondent as set out in the writ petition. After paying himself compliments for his professed ability, extra-ordinary performance and outstanding record, and complaining of the arbitrary behaviour of the Chief Secretary and his vindictive, mala fide and biased attitude, the respondent stated that in the year 1995 when he was serving as Additional District Magistrate (City) (Incharge of Law & Order), Jaipur, an encounter took place between the police and members of the Khalistan

Liberation Force (KLF) in the night of 25th/26th February, 1995 at Model Town, Jagatpura, Jaipur in which one Navneet Singh Kandia was killed while other terrorists escaped. The respondent on coming to know about the incident rushed to the spot. On search he found some clues on the basis of which he could trace out the headquarter of terrorists and their secret hideouts in Jaipur and recover sophisticated arms and ammunitions and explosives. The recovery was first of its kind in the history of Rajasthan. The Collector, Jaipur vide letter dated 4.3.1995 appreciated his work and recommended out of turn promotion, state award and suitable cash reward to him. The Divisional Commissioner, Jaipur also vide his D.O. dated 7.3.1995 recommended out of turn promotion. The Chief Secretary, Government of Rajasthan by letter dated 8.4.1996 conveyed Government's appreciation for the outstanding work done by him showing initiative, resourcefulness and dedication towards duty in discovering a terrorist hideout. The respondent made representation on 1.7.1996 with request to grant him "one scale promotion" taking into consideration recommendation of the controlling authority which

according to him had not been taken into consideration earlier. On 5.10.1996 the State Government granted three advance annual grade increments in recognition of the gallant service/work performed by him. Later, on coming to know that one Govind Detha, a police official posted as SHO at the relevant time had been awarded with out of turn promotion in recognition of his work in an encounter, on 2.12.1998 the respondent made representation to award him similar out of turn promotion. Therein he contended that if an officer can be allowed out of turn promotion for doing something which is part of his duty, he should be given similar out of turn promotion for doing something which was not part of his duty. On 25.9.2002 he filed another representation. On 20.7.2004 he filed yet another representation. On 25.11.2004 the Director General of Police, Rajasthan addressed a D.O. to the Additional Chief Secretary, Home Department, Govt. of Rajasthan, Jaipur requesting him to review his case for out of turn promotion. Complaining of inaction on the part of the State Government in giving him out of turn promotion despite recommendations to that effect and alleging that it was on account of bias on the part of

the (then) Chief Secretary who was annoyed with him because his brother had filed a contempt petition against the Chief Secretary, the respondent filed the writ petition seeking the following reliefs :

> "(i) Issue an appropriate writ, order or direction to the State Government to treat this case as an extra-ordinary exceptional case of gallantry in the history of Rajasthan and by treating the same in the manner, the petitioner may kindly be awarded out of turn promotion.
>
> (ii) Issue an appropriate writ, order or direction or a mandamus in the nature thereof directing the State Govt. to award out of turn promotion or benefit of one time Scale from the date the incident occurred i.e.26.2.1995 to the petitioner for his extra-ordinary gallantry work.
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> (iii) Issue an appropriate writ, order or direction or a mandamus in the nature thereof directing the State Government to place on record original award file of the Police Department in which whole case of petitioner has been examined.
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> (iv) Issue an appropriate writ, order or direction in the nature thereof directing the State Government to relax the provisions of Rule 14(i) by exercising relaxation power of the Government under Rule 41 of the Rules of 1954 in giving out of turn promotion to the petitioner.
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> (v) Issue an appropriate writ, order or direction in the nature thereof directing the State Govt. to give equal treatment to the petitioner alike other participants in this terrorist episode and similar treatment like out of turn promotion, cash reward of Rs.1.00 lac and gallantry medal as were granted to

other police officials may be given to the petitioner.

(vi) Issue an appropriate writ, order or direction in the nature thereof directing the State Govt. to give benefit of seniority to the petitioner in terms of his out of turn promotion while preparing the seniority list of RAS officers and further promotions in the cadre or alternatively the State Government may be directed to finalise the seniority list giving seniority to the petitioner."

In its reply to the writ petition, the State Government took the plea that there was no provision in the RAS Rules to give out of turn promotion to a member of the RAS. In appreciation of his services and gallant work, the respondent had already been granted three advance grade increments on 5.10.1996. Though the case of the respondent had been recommended for out of turn promotion, but in absence of any such provision in the RAS Rules such benefit could not be accorded to him. Grant of three advance grade increments was in a sense an accelerated advancement. The Government also stated that the case of the respondent was similar to that of Rohit Mahajan, Additional S.P. (Traffic) who had not been granted out of turn promotion. The case of Govind Detha was

distinguished and it was stated that he was instrumental in encounter with terrorists and freeing of Shri Rajendra Mirdha in which neither the respondent nor Rohit Mahajan was involved.

The learned Single Judge referred to letters of the Collector and Divisional Commissioner dated 4.3.1995 and 7.3.1995 respectively and observed that while the police official involved in the “same” incident had already been granted suitable awards and even out of turn promotion by making necessary amendment in the relevant rules, in the case of respondent the authorities washed their hands by just granting him three advance grade increments which was nothing but “tossing a coin in the bowl of a beggar”. The observations of the learned Single Judge may be quoted as under :

> “Without processing and pursuing the matter any further, the most unfortunate part is that the authorities washed their hands just by awarding three advance grade increments to the petitioner, the monetary benefit of which comes to only Rs.375/- in the salary per month. This is nothing but tossing a coin in the bowl of a beggar. The humiliation of the officer in such circumstances can be well imagined. Such pathetic sadistic approach of some of the higher authorities is highly deplorable. Instead of generating confidence

> among the officers such authorities only lose respect for themselves."

The learned Single Judge then referred to the notings of the Secretary, Department of Personnel dated 8.2.2005 wherein it had been observed that if out of turn promotion to the respondent with retrospective effect is to be made treating his case similar to that of Govind Detha, it would require amendment in the RAS Rules. The learned Single Judge took the view that there was no necessity to make amendments in the Rules as rule 41 confers power to relax the rules. The appellant had been granted Selection Grade as per his turn in the year 1991-92, but in view of his exceptional service, "he ought to have been granted Super Time Scale of RAS by relaxing the rules as provided in rule 41 of the RAS Rules from the year 1995 itself". The learned Single Judge also observed that though there was no necessity to make amendments in the rules in view of rule 41, "still, if the situation requires and as has been done in other service rules, necessary amendments can also be made for future in regard to giving out of turn promotion

to the employees to encourage and appreciate their services". Having made these observations, the learned Single Judge allowed the writ petition with directions which have been noticed above at the outset of this judgment.

Before referring to the provisions of the RAS Rules, a few things may be stated to clarify the factual position. The discovery of the terrorist hide-out, accredited to the respondent, in the night of 25th/26th February, 1995 was the sequel to the kidnapping and subsequent recovery of one Rajendra Mirdha. While the operation was going on to search the escaped terrorists, the respondent who was incharge of law & order of Jaipur City and was on the round, came across a wireless message in his vehicle and taking note of the same, immediately rushed to the spot and after apprising himself of the happenings, left in search of the escaped terrorists alongwith Rohit Mahajan, Addl. S.P. (Traffic) who had also reached there. Both the officers spotted a maroon coloured briefcase about two furlongs away from the place of encounter and found keys inside. One of the keys was

of a new Maruti Car with the name tag of one Ravindra Choudhary. The respondent advised Rohit Mahajan to further undertake detailed inquiry with a view to reaching the escaped terrorists. In the words of the Collector, “What happened thereafter during the enquiry is contained in the inquiry report submitted by Shri Bhati” i.e. the respondent himself. The Collector then stated facts from the said enquiry report enclosing its copy with his letter dated 4.3.1995. In the light of the facts stated in the report (of the respondent himself), the Collector recommended the case of the respondent for out of turn promotion, state award and suitable cash reward. The Collector further recommended that Rohit Mahajan, Addl. S.P. (Traffic), who had worked in “close co-ordination” with the respondent in conducting the search, also deserved recognition of the State Government as per its declared policy. He observed that the operation could be possible because of “perfect co-ordination amongst all those involved in the operation”. It is relevant to mention that Rohit Mahajan was allowed three advance grade increments, which was allowed to the respondent - too.

Another fact which may be clarified is that out of turn promotion to Govind Detha was for the incident relating to encounter with terrorists and rescue of Rajendra Mirdha in which the respondent was not involved. As mentioned above, he along with Rohit Mahajan had been instrumental in finding out a terrorist hide-out and recovery of arms and explosives. Thus, comparison of the case of respondent with that of Govind Detha as if both of them were involved in the same incident was not correct. The observation of the learned Single Judge to the contrary –referred to above – was clearly the result of misrepresentation of facts. If there was any similarity, it was with the case of Rohit Mahajan who was granted three advance grade increments like the respondent.

Yet another fact which may be kept in mind is that the basis of the recommendation of the Collector or the Divisional Commissioner were the facts stated in the report of the respondent himself – which becomes evident from a reading of the letters. We do

not wish to belittle the work done by the respondent, we only want to clarify that the impression formed by the Collector/Commissioner was on the basis of facts as stated by the respondent himself.

At this stage, reference may be made to the relevant rules of the RAS framed under proviso to Article 309 of the Constitution of India. Rule 7 which provides for source of recruitment lays down that the recruitment to the service i.e. the Rajasthan Administrative Service shall be made - (a) by direct recruitment and; (b) by promotion of Tehsildars. Part IV contains provisions regarding direct recruitment while Part V contains provisions for recruitment by promotion. Section 32 deals with appointment to senior post. Sub-rule (1) thereof provides that in accordance with vacancies determined according to the provisions laid down in rule 9, appointment to senior Scale, Selection Scale and Super Time Scale shall be made by the Government from amongst members of the Service in accordance with the selection made on the basis of merit and seniority –cum- merit on the recommendation of a Committee headed by the Chairman, Rajasthan

Public Service Commission and consisting of three members as mentioned therein. Sub-rule (2) lays down the procedure and principles to be followed for granting higher scales. Sub-rule (3) lays down the eligibility for grant of and appointment to the Super Time Scale post. Having regard to the significance of the provision, sub-rule (3) may be quoted as under :

> "(3) No member of the Service who has not completed 3 years service on the selection scale posts and 20 years service in all on the posts included in the Service shall be eligible for appointment on the super time scale posts."

Case of the appellants is that in terms of sub-rule (3) of rule 32, it is mandatory that the member of the Service should have put in three years service on selection scale post and also twenty years service in all, and that is how the appellants and the respondent were promoted to Super Time Scale on completion of twenty years of service. The respondent who belongs to 1980 batch of direct recruitment and completed twenty years of service in the year 2000, was thus promoted to the Super Time Scale with effect from 2001-02. He was not entitled for promotion to Super Time Scale prior to 2001.

The respondent does not contend to the contrary so far as interpretation of sub-rule (3) of rule 32 is concerned. According to him, however the government has power to relax the rule or, alternatively, the government may amend the rule. And in the facts and circumstances, having regard to the extra-ordinary service rendered by him, he was entitled to out of turn promotion - if not by relaxing rule 32(3) exercising the power of relaxation under rule 41, by suitably amending the RAS Rules to provide for out of turn promotion.

It is not in dispute that under the RAS Rules there is no provision for out of turn promotion and therefore, in the ordinary course such promotion can not be given to a member of the RAS without amending the rules. But instead of amending the rules, out of turn promotion has been given in this case by relaxing the rules in exercise of power under rule 41. The rule or rules so relaxed have not been specified in the order dated 16.5.2006. There is omnibus reference to “rules”. Apparently, the rule under reference is sub-

rule (3) of rule 32. The question for consideration is whether the condition of eligibility prescribed under rule 32(3) can be relaxed in exercise of power under rule 41.

At this stage, rule 41 may be quoted as under :

> “41. Power to relax rules.- In exceptional cases where the Administrative Department of the Government is satisfied that operation of the rules relating to age or regarding requirement of experience for recruitment causes undue hardship in any particular case or where the Government is of the opinion that it is necessary or expedient to relax any of the provisions of these Rules with respect to age or experience of any persons, it may with the concurrence of the Department of Personnel and Administrative Reforms and in consultation with the Commission by orders dispense with or relax the relevant provisions of these Rules to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner, provided that such relaxation shall not be less favourable than the provisions already contained in these rules, such case of relaxation shall be referred to the Rajasthan Public Service Commission by the “Administrative Department concerned.”

On a plain reading, it would appear that in an exceptional case where the Government is satisfied that operation of the rules would cause undue hardship

in a particular case, it may dispense with or relax the rule with respect to age or experience of any person(s). Dissecting the rule further, in (a) exceptional cases; (b) to mitigate undue hardship; (c) to the extent as may be necessary to deal with the case in a just and equitable manner and; (d) the rule with respect to age or experience (of a person) can be relaxed.

We do not wish to go into the question as to whether the events which took place in the night of 25th/26th February, 1995 made out an “exceptional case”. The learned Single Judge not only made favourable observations but virtually recorded a finding to that effect. We are of the view that it is for the State Government to form an independent opinion on the point. While exercising power of judicial review under Article 226 of the Constitution, the High Court cannot record any such finding nor issue any direction to either relax the rule or amend the rules. These are executive or legislative functions which the High Court can not indirectly perform under Article 226 of the Constitution.

Besides, it is well known that an employee can not claim any right of promotion. Way back in State of Mysore V. G.B. Purohit, 1967 SLR 753 SC, it was held that a right to be considered for promotion is a condition of service but mere chances of promotion are not. This was approved by the Constitution Bench in Ramchandra Shankar Deodhar V. State of Maharashtra, (1974) 1 SCC 317. This principle has been reiterated times without number. In Mohd. Shujat Ali V. Union of India, (1975) 3 SCC 76, it was observed -

> "But when we speak of a right to be considered for promotion, we must not confuse it with mere chance of promotion – the latter would certainly not be a condition of service … that though a right to be considered for promotion is a condition of service, mere chances of promotion are not."

Reference may also be made to Reserve Bank of India V. C.T. Dighe, (1981) 3 SCC 545, State of Maharashtra V. Chandrakant Anant Kulkarni, (1981) 4 SCC 130, Reserve Bank of India V. C.N. Sahasranaman, 1986 Supp. SCC 143, Paluru Ramkrishnaiah V. Union of India, (1989) 2 SCC 541 and K. Jagadeesan V. Union of India, (1990) 2 SCC 228.

If chance of promotion is not a condition of service and can not be enforced by a writ of mandamus it is difficult to appreciate as to how claim for out of turn promotion can be enforced by a similar writ. The claim for ‘out of turn’ promotion on the basis of one’s own perception of his work or even otherwise can not even be called ‘chance of promotion’ in the legal sense muchless a condition of service. Claim for out of turn promotion, in our opinion, would stand on lesser footing than regular promotion, and if chance of regular promotion can not be enforced, no writ can be issued for enforcement of a claim for out-of-turn promotion. The direction of the learned Single Judge is fit to be set aside on these grounds alone.

In the instant case, the State Government has already issued an order in favour of the respondent in purported compliance of the impugned directions of the learned Single Judge and interim order of the Division Bench dated 27.3.2006. We have nevertheless made the observation to clarify the legal position so that in case the State Government were to reconsider the matter, the observations/findings of the learned

Single Judge would not stand in the way in taking an independent decision.

Assuming that it was an “exceptional” case, two questions would arise for consideration - (i) Whether it was a case of “undue hardship” ? and (ii) Whether the power of relaxation being limited to the rules relating to age or experience, sub-rule (3) of rule 32 could be relaxed ? In other words, whether eligibility condition under rule 32(3) could be relaxed ?

In Suraj Prakash Gupta & Ors. Vs. State of J&K & Ors., (2000) 7 SCC 561, the Supreme Court made distinction between relaxation of conditions of service and relaxation of recruitment rules and held that while the rules relating to conditions of service may be relaxed, the recruitment rules cannot be relaxed. It would be useful to quote the relevant observations in paragraphs 26 and 32 as under :

> “Some relaxation rules permit relaxation of conditions of service and some permit relaxation of rules. Some permit relaxation in any particular case and some permit relaxation in favour of a person or class ofpersons. In J.C. Yadav V. State of Haryana a three-Judge Bnech

> while dealing with Rule 22 of the relevant Rules which permitted relaxation, in case of hardship, in "*any particular case*", held that the above words did not mean a particular person but meant "pertaining to an event, situation or circumstances". The power could therefore be exercised even in favour of a group.
>
> In our view, there can be no hardship for a person seeking appointment or promotion to go by the procedure prescribed therefore. The relevant Recruitment Rule for promotion cannot itself be treated as one producing hardship."

The Supreme Court observed that in some earlier cases recruitment rule had been either expressly or impliedly relaxed but "the recent trend of cases in this Court is entirely different" (vide para 27 of the judgment). The Supreme Court referred to the cases of Keshav Chandra Joshi Vs. Union of India, 1992 Supp.(1) SCC 272, Syed Khalid Rizvi V. Union of India, 1993 Supp.(3) SCC 575, State of Orissa V. Sukanti Mohapatra (1993) 2 SCC 486, M.A. Haque Vs. Union of India, (1993) 2 SCC 213, J&K Public Service Commission V. Dr. Narinder Mohan, (1994) 2 SCC 630, Arundhati Ajit Pargaonkar V. State of Maharashtra, 1994 Supp.(3) SCC 380 – amongst others.

Rule 32 of the RAS Rules which deals with

appointment to senior post is in the nature of recruitment rule and we are not able to appreciate as to how operation of that rule can cause hardship to a person. As a matter of fact, we have grave doubts if denial of out-of-turn promotion to an employee can be said to cause “undue hardship” to him so as to attract rule 41. We have also grave doubts if the eligibility condition prescribed in sub-rule (3) of rule 32 is amenable to power of relaxation under rule 41. The power of relaxation under rule 41 can be exercised where the operation of rules relating to “age or experience” for recruitment causes undue hardship in any particular case.

Shri S.R. Bajwa, learned senior counsel for the respondent, tried to convince us that had out of turn promotion not been given to the respondent it would have caused undue hardship to him. He used euphemisms in praise of the respondent. He described the grant of three advance increments as a ‘peanut’ and ‘drop in the ocean’. As indicated earlier, we do not wish to make comment on his work but we are unable to appreciate as to how not granting out of turn promotion

can cause hardship to a person. Literally the term is used in the sense of financial hardship and envisages a situation which is difficult and unpleasant on account of scarcity of money, food, clothes etc. In service jurisprudence the term is used to describe an inequitable or unjust situation of an employee or group of employees on account of application of rules. In such a case rule may be relaxed to mitigate the hardship to do justice and equity to them. Where the claim for out of turn promotion – or even regular promotion – is not granted, the decision may be challenged on some valid ground within the parameters of judicial review, but it can not constitute hardship. No doubt where application of the rule results in an unjust and inequitable situation, it would be a case of hardship. In such cases there may be justification to relax the rule.

In J.C. Yadav v. State of Haryana, (1990) 2 SCC 189, which deals with a similar rule – which permitted relaxation in case of hardship – the Supreme Court held that the words “any particular case” did not mean a particular person but meant “pertaining to an event, situation or circumstances”. The power can not

be exercised to show favour to any person. The legal position will be clearer when we notice the cases cited by Shri Bajwa himself later in this judgment.

Besides, as observed above, and held by the Supreme Court, a recruitment rule can not be relaxed. Rule 41 refers to relaxation of rule relating to age or experience – and not any rule of recruitment. Rule 32 of the RAS Rules contains rules of recruitment to senior posts viz. Senior Scale, Selection Scale and Super Time Scale, and sub-rule (3) lays down the eligibility for promotion to super time scale posts.

Shri Bajwa tried to bring the case under the clause ‘experience’. It was submitted with reference to clause (o) of rule 4 of the RAS Rules that the length of 20 years of service under sub-rule (3) of rule 32 is the same thing as experience and therefore the condition that an officer should have twenty years’ service in all can be relaxed. Rule 4 of the RAS Rules is the definition clause. Clause (o) thereof defines service or experience as “a condition for promotion from one service to another or within the service from one category to another or to senior posts”. It is true

that a common definition has been given to both service and experience but they have to be understood in the context in which they appear. While service refers to the length of service, experience refers to skill or knowledge acquired by a person pursuant to working on a particular post. In Black's Law Dictionary, 'experience' is defined to mean – "duration of being engaged in a particular study or work, supplying skill, facility or practical wisdom gained by personal knowledge, feeling and action, and also the course or process by which one attains knowledge or wisdom". Sub-rule (3) of rule 32 refers to three years service on the selection scale post and twenty years service in all on the post included in the Service as a condition of eligibility for appointment to the Super Time Scale post.

On a plain reading, 'service' in the context of rule 32(3) must mean length of service. It cannot be understood in the sense of experience. In any view, even if it is understood in the same sense as experience, the power of relaxation can be exercised only at the time of initial recruitment. Appointment to

senior posts including Super Time Scale Post, under rule 32 cannot be construed as recruitment so as to make the provision thereof amenable to rule 41. Recruitment under rule 7 as seen above, means recruitment to the Service by direct recruitment through combined competitive examination or by promotion from amongst Tehsildars. In view of the decision in Suraj Prakash Gupta Vs. State of J&K (supra) it is doubtful if the rule of recruitment can be relaxed.

Another aspect is that the promotion on Super Time Scale post can be made in the manner laid down in rule 32. Sub-rule (1), as seen above, lays down that appointment to Senior Scale, Selection Scale and Super Time Scale shall be made by the Government in accordance with the selection on the basis of merit and seniority –cum- merit on the recommendations of a Committee comprising of the Chairman, Rajasthan Public Service Commission as Chairman, and Chairman, Board of Revenue and two other Secretary level officials as members. We are of the view that even out of turn promotion – where it is permissible – can be given only

on the recommendation of the Statutory Committee and in the manner prescribed and not otherwise. In decisions noticed by the Supreme Court in the case of Suraj Prakash Gupta referred to above, consultation with the Public Service Commission was held to be mandatory. There is nothing on record to suggest that out of turn promotion was given to the respondent on the recommendation of the Committee envisaged in rule 32 (1). Thus even if the case of the respondent is accepted that out of turn promotion could be granted to the respondent by relaxing the eligibility as to the length of total service prescribed under rule 32(3), it could not be granted by bypassing the provisions of sub-rule (1) of rule 32, and thus on this ground also the order dated 16.5.2006 cannot be said to be in accordance with law.

Shri Bajwa to buttress his submissions on the point of relaxation and retrospective effect thereof placed reliance on R.P. Khanna Vs. S.A.F. Abbas, (1972) 1 SCC 784, Govt. of A.P. Vs. D. Janardhana Rao, (1976) 4 SCC 226, R.R. Verma Vs. Union of India, (1980) 3 SCC 402, J.C. Yadav Vs. State of Haryana, (1990) 2 SCC 189,

M. Venkateswarlu Vs. Govt. of A.P., (1996) 5 SCC 167, Santosh Kumar Vs. State of A.P., (2003) 5 SCC 511 and P.N. Premchandran Vs. State of Kerala, (2004) 1 SCC 245. These decisions, it would appear, were rendered on facts of the respective case.

The cases of D. Janardhana Rao, M. Venkateswarlu and Santosh Kumar had arisen from the State of A.P. and in all these cases relaxation had been allowed in exercise of power under rule 47 of the Andhra Pradesh State and Subordinate Services Rules to the following effect :

> "47. Relaxation of rules by the Governor.- No rule made under the proviso to Article 309 of the Constitution of India or continued under Article 313 of the Constitution shall be construed to limit or abridge the power of the Governor to deal with the case of any class or category of person for being appointed to any civil post, or of any person serving in a civil capacity under the Government of Andhra Pradesh in such manner as may appear to him to be just and equitable :
>
> Provided that, where any such rule is applicable to the case of any person or a class of persons the cases shall not be dealt with in any manner less favourable to the person or class of persons than that provided by that rule."

Apart from the fact that the power of

relaxation was couched in more general terms than under rule 41 of the RAS Rules, it would appear that the rule was relaxed in the peculiar facts of each case. In the case D. Janardhana Rao (supra), the rule was relaxed to accommodate the Deputy Tahsildars of the Telangana area of the State. After formation of the State of Andhra Pradesh comprising the Telangana area, on 7.4.1960 a government order was issued to the effect that the first stage promotion would be made as per the Hyderabad Cadre and Recruitment Rules, but subsequent promotions would be made as per the rules in force in the new State. As per the Andhra Pradesh Civil Services (Executive Branch) Special Rules Revenue Department framed on 17.7.1962, but given retrospective effect from 1.11.1956, Tahsildar could be recruited by transfer from the category of Deputy Tahsildars provided he was a permanent Deputy Tahsildar or an approved probationer in the category of Deputy Tahsildars and had exercised the powers of a magistrate of the third class and also of the second class for a period of six months in each capacity. Only those candidates who had passed criminal judicial test could be invested with magisterial powers under the orders in

force. It transpired that 63 erstwhile employees of the Government of Hyderabad did not have the opportunity to acquire the qualifications on their promotions as Deputy Tahsildars. The Government felt that they should not be left out of consideration for appointment as Tahsildars and asked the Public Service Commission to consider their names for inclusion in the lists of eligible candidates assuring that the Government would relax the requirement as to qualification in their favour provided they were otherwise found suitable by the Commission. They were ultimately found suitable and appointed by the Government by relaxing the rule in exercise of power under rule 47. The point canvassed before the Supreme Court was whether under rule 47 relaxation can be made with retrospective effect, and it was answered in the affirmative.

In the case of M. Venkateswarlu (supra), the appellant was short of five months service as a Senior Assistant and one year and five months in total length of service, but in view of the “huge” backlog of reserved vacancies on account of non-availability of

Scheduled Caste/Scheduled Tribe candidates, the Government relaxed the rule. The Supreme Court held that it was the constitutional obligation of the State to fill up the backlog vacancies meant for SC/ST and the power of relaxation had rightly been exercised under rule 47 of the Rules.

In the case of Santosh Kumar (supra)the respondent alongwith others was appointed as Sub-Inspector of Police without following the recruitment rules but in the promotion quota. The government regularized their services by relaxing rules in exercise of power under rule 47 with effect from the date of their temporary appointment affecting the seniority of the appellant. The contention put forward before the Supreme Court on behalf of the appellant was that a person who was not appointed in accordance with the rules was not entitled to seniority from the date of his temporary appointment and such relaxation even if permissible, could not affect the seniority of the recruits appointed on regular basis after selection by the State Public Service Commission. The Supreme Court relying on D. Janardhana Rao (supra) and M.

Venkateswarlu (supra) among other cases held that the power under rule 47 could be exercised with retrospective effect.

In the case of R.P. Khanna Vs. S.A.F. Abbas (supra), the point for consideration was whether a retrospective declaration could be made regarding equivalence of senior posts for the purpose of rule 3 (3)(b) of the Indian Administrative Service (Regulation of Seniority) Rules, 1954. The rule laid down that the year of allotment of an officer who was appointed to the service by promotion in accordance with the recruitment rules shall be the year of allotment of the junior-most among the officers who entered the service by direct recruitment who officiated continuously on a senior post from a date earlier than the date of commencement of such officiation by the former. The second proviso to the rule laid down that the promotee shall be deemed to have officiated continuously on a senior post prior to the date of the inclusion of his name in the select list prepared in accordance with the requirements of the Indian Administrative Service (Appointment by Promotion) Regulations if the period of

such officiation prior to that date was approved by the Central Government in consultation with the Union Public Service Commission. Overruling the contention raised on behalf of direct recruits, the Supreme Court held that retrospective declaration is in the scheme of things practical as well as reasonable.

In the case of R.P. Verma Vs. Union of India (supra) the point for consideration was the constitutional validity of rule 3 of the All India Services (Conditions of Service Residuary Matters) Rules, 1960. The Supreme Court found that under Section 3 of the All India Services Act the Central Government had made innumerable sets of rules. Though the rules so framed covered countless matters such as creation of cadre, fixation of cadre strength, recruitment, seniority, promotion, leave, allowances, conduct, discipline and appeal, and a host of other matters, the rules could not be exhaustive. To quote their Lordships –

> “. . . . . Now, the very wide as the range covered by the rules is, the rules can never be exhaustive. Unforeseen and complex situations often arise as will be obvious even from a bare perusal of the cases reported in the law journals arising out of “service controversies”.

> Very often it is found that an all too strict application of a rule works undue hardship on a civil servant, resulting in injustice and inequity, causing disappointment and frustration to the civil servant and finally leading to the defeat of the very objects aimed at by the rules, namely, efficiency and integrity of civil servants. Hence it is that the Central Government is vested with a reserve power under Rule 3, to deal with unforeseen and unpredictable situations, and to relieve the civil servants from the infliction of undue hardship and to do justice and equity".

In the case of J.C. Yadav Vs. State of Haryana (supra), the facts were that in terms of rule 6 (b) of the Haryana Service of Engineers Class I PWD (Public Health Branch) Rules 1961, no person could be appointed to Class I Service of Engineers from Class II unless he had completed eight years of service in Class II and had passed the departmental examination. None of the appellants had completed eight years of service in Class II; in fact no other member of Class II Service possessing requisite qualification was available for selection to Class I post. The respondents possessed requisite qualification with regard to eight years' length of service in Class II but he did not possess the requisite educational qualification. Having regard to these facts the

Selection Committee recommended relaxation of rule 6 (b) in favour of the appellants who were otherwise found suitable. The Public Service Commission agreed with the recommendations. Non-availability of suitable Class II officers in the Engineering Department possessing prescribed qualification for promotion to Class I post posed a problem for the State Government as on account of large scale expansion of engineering department, a number of posts in Class I Service were lying vacant. In the circumstances, the State Government with a view to meet the particular situation decided to relax the qualifying length of service for such officers who had completed four years of service in Class II and to this extent relaxed the requirement of rule 6(b). Approving the decision of the State Government, the Supreme Court held that -

> "These facts would clearly show that the relaxation had been granted to particular individuals with a view to meet the situation which was in the public interest".

In P.N. Premchandran Vs. State of Kerala (supra), the dispute related to inter se seniority between direct recruits and promotees on account of retrospective promotion. It was held that direct

recruits inducted subsequent to the temporary promotions cannot challenge the retrospective regularization of the temporary promotions and claim seniority over the promotees.

The facts of the abovementioned cases relied upon on behalf of the respondent, it would thus appear, were entirely different. The cases dealing with the dispute relating to inter se seniority on account of retrospective promotion stand completely on different footing and so far as cases involving the disputes on account of relaxation of rule are concerned, from the narration of facts of the respective case, it is apparent that the rule was relaxed in the peculiar facts of the case in order to undo hardship and in exigency of situation and service, to fulfill the constitutional mandate and to do justice. The decisions lend no help to the respondent.

As a matter of fact, as observed in Ashok Kumar Uppal V. State of J&K (1998) 4 SCC 179, under service jurisprudence as also the administrative law, the power of relaxation has “necessarily to be

conceded” to the employer particularly the State Government or the Central Government who have to deal with hundreds of employees working under them in different departments but as held in J.C. Yadav V. State of Haryana (supra) – as words of caveat – the power of relaxation is to be exercised to meet “particular event, situation or circumstances”.

Shri Bajwa submitted that where out of turn promotion is granted, the existing inter se seniority loses its significance, for, as a consequence of out of turn promotion, the person must steal a march over his seniors and if this is not so, out of turn promotion would become meaningless. The submission is well founded but this is not the question involved in this case. The question is whether out of turn promotion could at all be granted to the respondent muchless by relaxing rules. And if the junior steals a march over his seniors by reason of out of turn promotion it would only mean that any provision relating to out of turn promotion - where it exists in the rules – must be strictly, and not liberally, construed. A liberal application of the rule is bound to have adverse affect

on seniority and promotional prospects of others which may not be in the larger interest of the service.

Out of turn promotion has been given to the respondent by order dated 16.5.2006 purportedly under rule 31 of the RAS Rules. Rule 31 runs as under :

> “Urgent Temporary Appointment.- A vacancy in the Service which cannot be filled in immediately either by direct recruitment or by promotion under the rules may be filled in by the Government or by the authority competent to make appointments, as the case may be, by appointing in an officiating capacity thereto an officer eligible for appointment to the post by promotion or by appointing temporarily thereto a person eligible for direct recruitment to the Service, where such direct recruitment has been provided under the provisions of these rules:
>
> Provided . . . . . .”

The rule, it would appear, provides for “urgent temporary” appointment in situations mentioned therein. It contemplates a situation where vacancy “cannot be filled in immediately either by direct recruitment or by promotion”. Situations may arise where on account of some administrative or legal bottlenecks, it is not possible to make appointment either by direct recruitment or by promotion. The rule

contemplates that in such situation urgent temporary appointment can be made for a period not beyond one year. The concurrence of the Commission, where it is necessary, should be obtained in the meantime. The respondent admittedly stood promoted to the Super Time Scale vide order dated 29.11.2005 in the year 2001-02 – apparently after following the procedure prescribed under sub-rule (1) of rule 32. If that is so, we fail to understand as to what could be the justification to make “urgent temporary” appointment in the Super Time Scale from the year 1995. It is clear that what has been sought to be done is to shift the date of promotion to Super Time Scale from 2001-02 to 1995. Reference to rule 31 in the order dated 16.5.2006 – which can have no application whatsoever in the instant case - appears to be a camouflage for out of turn promotion and the same cannot be approved.

The respondent had been granted three advance annual grade increments on 5.10.1996. Earlier on 8.4.1996, the Government had conveyed its appreciation for the work done by him in discovering a terrorist hide-out. Rohit Mahajan, the then Additional S.P. who

alongwith respondent had participated in the operations had likewise been granted three advance annual grade increments. The case of the respondent stood exactly at par with him. If Rohit Mahajan was not granted out of turn promotion, it does not stand to reason as to how the respondent could be given such promotion for a similar work.

As a matter of fact, the respondent was apparently satisfied with the grant of three advance grade increments on 5.10.1996. On his own saying, he made representation for out of turn promotion after two years on 2.12.1998 after he came to know that Govind Detha had been awarded out of turn promotion. But as seen above, Govind Detha was instrumental in recovering Rajendra Mirdha after encounter with terrorists. The respondent came on the scene later. His pursuit, alongwith Rohit Mahajan, led to discovery of a terrorist hide-out. He therefore does not stand on the same footing as Govind Detha. This precisely was the stand of the State Government in the reply. The observation of the learned Single Judge in favour of the respondent drawing analogy from the case of Govind

Detha was therefore not justified. We have already made comments to this effect earlier in the judgment.

Coming to the question of locus standi of the appellants, the case of the respondent is that by virtue of grant of Selection Grade earlier in point of time than appellant nos.1, 3 and 4, he became senior to them and they cannot question his out of turn promotion. As regards appellant no.2, it is stated that he has been absorbed in the Board of Revenue and ceased to be member of the service. On the other hand, case of the appellants is that Super Time Scale was granted to the respondent later in point of time than the appellants and the date of promotion to Selection Grade therefore lost its significance.

It is not in dispute that the respondent was promoted to the Super Time Scale in the chain of 2001-02 vide order dated 29.11.2005. Though the order was issued during pendency of the writ petition, the respondent does not seem to have challenged the order. That apart, as held above, what has been sought to be done by the present order dated 16.5.2006 is to shift

the date of promotion of the respondent to 1995. Such shifting not only affects seniority of the appellants but may also affects their prospects for promotion to the Indian Administrative Service in view of regulation 5(2) of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955. The appellants can therefore legitimately challenge the order of the learned Single Judge.

The appeal is directed against the order of the learned Single Judge but during pendency of this case, the Government passed the consequential order purportedly in compliance of the order of the learned Single Judge as well as the interim order of this Court dated 27.3.2006 contrary to its professed stand in the reply/counter affidavit, subject to the decision in this appeal. In that view of the matter, rather than confining ourselves to the correctness of the order of the learned Single Judge we have considered the validity of the government order dated 16.5.2006. For the reasons mentioned in the relevant paragraphs of this judgment, the order of the learned Single Judge cannot be sustained and as a consequence, the order of

the State Government dated 16.5.2006 also must be quashed.

Before parting with the case we must again express our displeasure over the manner in which the Government passed the order even while the case had been fixed for final hearing on 15.5.2006 with consent of the counsel and it was running on the daily board. It is true that the Division Bench vide order dated 27.3.2006 had issued favourable directions but no time limit had been fixed for compliance nor any petition had been filed on behalf of the respondent complaining of non-compliance. The order apparently was passed in haste to overreach this Court. Be that as it may, as the order was passed during pendency of this appeal and subject to its decision, we find no difficulty in setting aside the same. As regards the order of the Division Bench dated 27.3.2006 we may simply observe that interim order of the kind virtually rendered the appeal infructuous and could have been avoided. In any view, being an interim order, it was subject to final decision in the appeal.

In the result, the appeal is allowed, the impugned judgment and order of the learned Single Judge dated 1.12.2005 as also the order of the State Government dated 16.5.2006 are set aside. The writ petition stands dismissed.

[J.R. GOYAL], J. **[S.N. JHA], CJ.**

Skant/-